

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Ducheny Analyst: Anne Mazur Bill Number: SCA 9
Related Bills: See Legislative History Telephone: 845-5404 Introduced Date: February 18, 2005
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: California Tax Commission/Continue BOE Duties As Well As Administer Income Taxes

SUMMARY

If approved by the voters, this constitutional amendment would rename the State Board of Equalization (BOE) the California Tax Commission (CTC) and would substitute all existing references in the California Constitution to the BOE with CTC. In addition to performing the existing duties of BOE, this measure would give the CTC added responsibility to:

- Collect and administer taxes on or measured by income, herein referred to as "income taxes,"¹ (now administered by FTB)
- Collect and administer any taxes that are withheld from wages (now administered by EDD).
- Conduct administrative review of state tax matter determinations.

This measure would also make certain changes that would not impact the department, and therefore are not addressed in this analysis.

PURPOSE OF THE MEASURE

According to this measure, the intent of the Legislature is to streamline and consolidate California's tax collection agencies to save taxpayer funds and simplify administration.

EFFECTIVE/OPERATIVE DATE

This measure would become effective the day following approval by the voters in the first statewide election following approval of the measure by the Legislature.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

The IRS collects and administers the federal income tax and various other taxes, including employment taxes. Taxpayers may petition the Tax Court to redetermine deficiency assessments proposed by the IRS. This redetermination is a trial de novo (new). Either party may appeal an adverse Tax Court determination to the federal appellate courts.

¹ In this analysis "income" tax includes the franchise tax, which is a corporate tax measured by income and administered by the FTB.

Board Position:	Department Director	Date
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In lieu of petitioning the Tax Court to redetermine a deficiency, the taxpayer may pay the tax and file a claim for refund with the IRS. Assuming the IRS denies the claim for refund, the taxpayer may bring a lawsuit in federal district court or the U.S. Court of Federal Claims for the recovery of the amount paid. Either party may appeal an adverse court determination to the federal appellate courts.

Under California law, three agencies are involved in the administration of the income tax laws:

- Employment Development Department's (EDD) Tax Branch administers the collection, accounting, and auditing functions of California's payroll tax program. The program consists of Unemployment Insurance and Employment Training Tax, which are employer contributions, and Disability Insurance and Personal Income Tax, which are withheld from employees' wages.
- Franchise Tax Board (FTB) administers the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL). FTB collects taxes under the PITL and CTL through withholding from sources other than wages, payment of estimated income taxes, and other remittances such as return payments. If necessary, FTB also collects balances due by recording property liens or issuing withholding orders on earnings or bank accounts. FTB also administers non-income tax related programs including: Senior Citizens Homeowners and Renters Property Tax Assistance program (HRA); non-tax debt collection programs, including child support (ending July 1, 2005), court-ordered debt, vehicle registration, industrial health and safety, and interagency intercepts; Political Reform Audit (PRA); and the Nonadmitted Insurance Tax program (NIT). FTB is also responsible for developing and implementing the California Child Support Automation System (CCSAS), which is budgeted at more than \$1 billion over a ten-year period. Upon full implementation of CCSAS, scheduled for 2008, the state will be relieved of annual federal penalties of more than \$200 million. The three-member FTB is comprised of the State Controller, Director of Finance, and Chair of the BOE.
- BOE is a constitutional body that is an agency-equivalent not reporting to the Governor. BOE administers property tax, sales and use tax, and special taxes including fuel tax, excise tax, environmental fees, and electronic waste recycling fee. The five-member BOE includes the State Controller and four elected members.² The BOE is vested with the authority under the Sales and Use Tax Law to "redetermine," that is, administratively review, determinations made by the BOE with respect to tax programs it administers. In addition, the BOE is authorized to decide taxpayer appeals of FTB actions on personal income tax, franchise tax, and HRA matters.

THIS BILL

This proposed constitutional amendment would:

- Rename the BOE as the CTC.
- Require the CTC to continue existing BOE duties and also to collect and administer income taxes, imposed on persons, corporations, or other entities.
- Authorize the CTC to conduct administrative review of state tax matter determinations.

This measure would also make certain changes that would not impact the department. These changes would:

² For this purpose, the state is divided into four districts. One member is elected from each district.

- Increase the number of voting members of the BOE/CTC from five to nine, including one governor appointee and three additional elected members.
- Limit to two terms any member appointed or elected on or after November 6, 2006.
- Direct the legislature to enact laws necessary to carry out provisions relating to establishment of the CTC, including laws necessary to establish new district boundaries.
- Make the CTC responsible for the collection and administration of any taxes that are withheld from wages.
- Make nonsubstantive technical changes.

IMPLEMENTATION CONSIDERATIONS

The Revenue and Taxation Code requires FTB to administer and enforce the PITL and the CTL. It appears that the constitutional amendment generally would give some of these same responsibilities to the CTC, which could result in administrative conflicts between FTB and CTC since statutes establishing and describing the duties of FTB would still exist. FTB may have to continue its statutory responsibility to administer the income tax laws until such time as directed otherwise through enabling legislation or order of a state appellate court.

When providing for the enabling legislation, consideration should be given to several non-tax responsibilities administered by FTB. These programs include: homeowners and renters assistance, political reform audit, nonadmitted insurance tax programs, and the CCSAS project. It is unclear whether it is the author's intent to shift responsibility for these programs to CTC or leave them with FTB.

Enabling legislation should also clarify the CTC's authority to conduct administrative review of state tax matter determinations. The BOE has the authority to redetermine determinations made by the BOE with respect to tax programs it administers; however, it is unclear whether "administrative review of state tax matters" contemplates a continuation of this redetermination authority, and whether this same redetermination authority would extend to CTC actions relating to income taxes.

LEGISLATIVE HISTORY

Appendix A contains a comprehensive listing of legislation regarding the consolidation or transfer of duties of state tax agencies. Notable legislation is listed below.

ACA 14 (DeVore, 2005/2006), which is substantially similar to this bill, would change the name of the BOE to the CTC and provide for nine voting members. The measure would require the commission to collect and administer taxes on or measured by income and to conduct administrative review of tax determinations. This measure is currently at the Assembly Desk.

AB 1615 (Klehs, 2005/2006) and SB 216 (Dutton, 2005/2006) are identical bills that would abolish FTB and transfer its duties and powers to BOE as of January 1, 2007. AB 1615 is currently at the Assembly Desk. SB 216 is currently with the Senate Committee on Government Modernization, Efficiency and Accountability.

ACA 22 (Dutra, 2003/2004) and ACA 13 (Leonard, 2001/2002) would have changed the name of the five-member BOE to the California Tax Commission and require it to collect and administer "taxes on or measured by income." Both measures were held in first house committees.

SB 1424 (Burton, 2003/2004) and AB 2472 (Wolk, 2003/2004) would have transferred from BOE the responsibility for hearing and deciding franchise and income tax appeals to a newly created California Tax Court. Additionally, this court would have adjudicated appeals relating to sales and use tax and insurance tax determinations. Both bills were held in first house committees.

AB 15 (Klehs, et al.; 1993/1994) would have abolished the FTB and transferred its duties and powers to BOE. Governor Wilson vetoed AB 15 stating his concern with the centralization “of all state policy, implementation and administration outside the executive branch of government.” He also noted that there was an inherent conflict of interest for “the [BOE] to serve as both administrator of the tax system, as well as the appellate body for taxpayer appeals.”

OTHER STATES’ INFORMATION

Most other states have a department under the governor, commonly named the Department of Revenue, which administers most types of taxes. Utah, Idaho, Mississippi, and Oklahoma have tax commissions, with all or a majority of the members of the commission appointed by the governor. North Dakota, Maryland, and Texas have an elected commissioner or comptroller who oversees tax administration. A majority of states have independent bodies such as tax courts or tribunals that adjudicate tax appeals.

FISCAL AND ECONOMIC IMPACT

This constitutional amendment in and of itself should not affect departmental costs and tax revenue. The fiscal and economic impact, if any, would result from the ensuing enabling legislation.

LEGISLATIVE STAFF CONTACT

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**Appendix A
Legislative History**

Bill Number	Action	Status
AB 1615 (Klehs, 2005/06)	Abolish FTB/Transfer Duties and Responsibilities to BOE	Assembly Desk
SB 216 (Dutton, 2005/06)	Abolish FTB/Transfer Duties and Responsibilities to BOE	Senate Government Modernization, Efficiency and Accountability
SCA 9 (Ducheny, 2005/06)	Create a California Tax Commission and provide for 9 voting members. Continue BOE Duties as well as administer income taxes.	Senate Revenue and Taxation
ACA 14 (DeVore, 2005/06)	Create a California Tax Commission and provide for 9 voting members. Continue BOE Duties as well as administer income taxes.	Assembly Desk
ACA 22 (Dutra, 2003/04)	Create a California Tax Commission/Continue BOE Duties As Well As Administer Income Taxes	Failed passage from Assembly Revenue and Taxation
AB 2000 (Dutton, 2003/04)	Abolish FTB/Transfer Duties and Responsibilities to BOE	Failed passage from AR&T
SB 1424 (Burton, 2003/04)	Replace BOE hearing functions with Tax Court.	Failed passage from Senate Revenue and Taxation
AB 2472 (Wolk, 2003/04)	Replace BOE hearing functions with Tax Court.	Failed passage from Asm. Appropriations
ACA 13 (Leonard, 2001/02)	Create a California Tax Commission/Continue BOE Duties As Well As Administer Income Taxes	Failed passage from Asm. Appropriations
AB 2794 (Bowen, 1995/96)	Abolish FTB/Create Department of Revenue/Create Board of Tax Appeals	Failed passage from AR&T
SB 1727/SCA 29 (Kopp, 1995/96)	Abolish FTB and BOE/Create State Taxing Authority/Create Board of Tax Appeals	Failed passage from Asm. Appropriations
AB 15 (Klehs, 1993/94)	Abolish FTB/Transfer Duties and Responsibilities to BOE	Vetoed
AB 1026 (Peace, 1993/94)	Abolish FTB/Transfer Duties and Responsibilities to BOE	Amended to no longer impact FTB
AB 2267 (Andal, 1993/94)	Abolish FTB/Transfer Duties and Responsibilities to BOE	Failed to pass out of Assembly by deadline
SB 87/SCA 5 (Kopp, 1993/94)	Abolish FTB and BOE/Create Department of Revenue/Create Board of Tax Appeals	Failed passage. Sen. Kopp requested inactive file
SB 1829 (Campbell, 1993/94)	Abolish FTB/Create Department of Revenue	Failed passage from SR&T
SB 2137 (Campbell/Kopp, 1993/94)	Abolish FTB/Create Department of Revenue/Create Board of Tax Appeals	Failed passage from Sen. Appropriations